

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

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In re:

PROMESA
Title III

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

No. 17 BK 3283-LTS

THE COMMONWEALTH OF PUERTO RICO
et al.,

(Jointly Administered)

Debtors.¹

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PUERTO RICO TOURISM DEVELOPMENT
FUND,

PROMESA
Title VI

Applicant.

Case No. 23-cv-01373 (LTS)

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ORDER REGARDING PROCEDURES FOR TITLE VI
APPROVAL HEARING FOR THE PUERTO RICO TOURISM
DEVELOPMENT FUND AND AUGUST 30-31, 2023 OMNIBUS HEARING

The Court will conduct an omnibus hearing on certain motions in the above-captioned cases and related adversary proceedings (the “Omnibus Hearing”) beginning at

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (the “Commonwealth”) (Bankruptcy Case No. 17-BK-3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17-BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

9:30 a.m. (Atlantic Standard Time) on August 30, 2023. Immediately upon the conclusion of the Omnibus Hearing, the Court will receive evidence and hear argument in connection with the request of the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF”) as fiscal agent for the issuer and the Puerto Rico Tourism Development Fund (“TDF”) as issuer for approval of the *Application of the Puerto Rico Tourism Development Fund, by and through the Puerto Rico Fiscal Agency and uFinancial Advisory Authority, for Approval of the Qualifying Modification for the Puerto Rico Tourism Development Fund Pursuant to Section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act* (Docket Entry No. 1 in Case No. 23-cv-01373) (the “Qualifying Modification Hearing” and, together with the Omnibus Hearing, the “Hearings”). The Hearings will be conducted on **August 30, 2023**, from **9:30 a.m. to 12:50 p.m. (Atlantic Standard Time)**, resume from **2:10 p.m. to 5:00 p.m. (Atlantic Standard Time)**, and continue, if necessary, on **August 31, 2023**, beginning at **9:30 a.m. (Atlantic Standard Time)**. The Court will conduct the Hearings in Courtroom 17C of the Daniel Patrick Moynihan Courthouse, 500 Pearl Street, New York, NY 10007 (the “New York Courtroom”), and by video teleconference in a courtroom to be designated in the United States District Court for the District of Puerto Rico, Clemente Ruiz Nazario US Courthouse, 150 Carlos Chardón Street, Federal Building, San Juan, Puerto Rico 00918-1767 (the “San Juan Courtroom”). The Hearings shall be governed by the following procedures.

Registration for In-Person Attendance and Listen-In Faculties for Attorneys, Members of the Public and Press

1. **In-Person Participation of Counsel.** Judge Swain will be present in the New York Courtroom. **All attorneys who are scheduled to participate in the Hearings are expected to appear in person (either in the San Juan Courtroom or the New York Courtroom).** Counsel who are not scheduled to present argument or examine witnesses have

the following options to access the Hearings: (i) observe in person in the New York Courtroom; or (ii) observe a video feed of the Hearings in person in the San Juan Courtroom. **Counsel who have entered their appearance in the Title III proceedings or the Title VI proceeding and intend to participate in the Hearings in person (in the San Juan Courtroom or the New York Courtroom) must file an informative motion**, as set forth in paragraph 5 below.

Informative motions are due **no later than August 23, 2023, at 5:00 p.m. (Atlantic Standard Time)**.

2. **Listen-Only Public Access to the Hearings.** Members of the public, press, and attorneys may **listen to but not participate in** the Hearings by dialing (888) 363-4749, and, when prompted, entering the access code (7214978) and security code (7533) for listen-only access. This telephonic access line for the press and the general public will be in listen-only mode at all times. Recording and retransmission of the proceedings by any means are prohibited.

3. **Live Video Feed of the Hearings.** Counsel and members of the public and press who wish to **view but not participate in** the Hearings may do so by appearing in person at the San Juan Courtroom or the New York Courtroom.

4. **Press Room.** A live video feed of the proceedings will be available for viewing in the press room in the San Juan courthouse. Members of the press should contact presscredentials@prd.uscourts.gov (San Juan) regarding viewing facilities and space availability. Members of the press may also view the proceedings in the New York Courtroom or dial into the listen-only line.

5. **Witness Testimony.** The Court expects that witnesses, if any, be available for in person cross-examination at the New York Courthouse during the Hearings.

Rule 43(a) of the Federal Rules of Civil Procedure, made applicable by Rule 9017 of the Federal Rules of Bankruptcy Procedure, provides that for “good cause in compelling circumstances” a witness may be permitted to testify by contemporaneous transmission from a location other than the courtroom. Any motions to allow a witness to provide remote testimony shall be due no later than **August 24, 2023, at 5:00 p.m. (Atlantic Standard Time)**.

a. The original proponent of a witness will be responsible for (a) arranging participation at the Qualifying Modification Hearing, (b) providing a certified interpreter if the witness requires translation services,² and (c) confirming witness attendance by emailing SwainDPRCorresp@nysd.uscourts.gov by **3:00 p.m. (Atlantic Standard Time)** the day before the witness is scheduled to testify with the following information: the (1) name of the witness, and (2) the name of the interpreter, if any.

b. The Court will review all declarations that have been submitted in support of or opposition to the Qualifying Modification in advance of the Qualifying Modification Hearing. The deadline for TDF or AAFAF to file witness declarations to be used at the Qualifying Modification Hearing is **5:00 p.m. (Atlantic Standard Time)** on **August 22, 2023**. The deadline for objectors to the Qualifying Modification, if any, to file witness declarations to be used at the Qualifying Modification Hearing is **10:00 a.m. (Atlantic Standard Time)** on **August 29, 2023**. All such declarations are deemed submitted as direct testimony.

² The original proponent of the witness is responsible for providing a certified interpreter if the witness requires translation services regardless of whether the witness testifies in the New York Courtroom or the San Juan Courtroom. Information regarding interpreter services for the San Juan Courtroom can be found on the website for the United States District Court for the District of Puerto Rico <https://www.prd.uscourts.gov/interpreter-services>.

Party Informative Motion and Exhibit List Procedures, and Witness Testimony

6. Party Informative Motion. Counsel for any party-in-interest (each, a “Party”) and any individual Party not represented by counsel that wishes to participate in the Hearings must file an informative motion by **August 23, 2023, at 5:00 p.m. (Atlantic Standard Time)**, except that counsel for any objectors to the Qualifying Modification may file an informative motion by **August 29, 2023, at 10:00 am (Atlantic Standard Time)**. The informative motion shall contain a completed Exhibit A, Exhibit B, and Exhibit C. Counsel who have not filed exhibits and/or do not intend to examine a witness may write “N/A” on the Exhibit B and Exhibit C cover sheets.

a. Party Appearance Sheet (Exhibit A). Counsel for any Party that has (a) filed a motion or response in connection with a matter noticed for the omnibus hearing (each, a “Party”) and wishes to participate at the Hearings, or (b) a Party that has timely filed an objection to or statement in support of the *Application of the Puerto Rico Tourism Development Fund, by and Through the Puerto Rico Fiscal Agency and Financial Advisory Authority, for Approval of the Qualifying Modification for the Puerto Rico Tourism Development Fund Pursuant to Section 601(m)(1)(D) of the Puerto Rico Oversight, Management, and Economic Stability Act* (Docket Entry No. 1 in Case No. 23-cv-01373), must register an appearance by completing the Party Appearance Sheet. Counsel must identify: (i) the Party for which they intend to appear; (ii) whether they intend to appear for the Qualified Modification Hearing, the Omnibus Hearing, or both; and (iii) the name(s), email address(es), and phone number(s) for those attorney(s) who wish to participate in the Hearings.

b. Exhibit List Procedures and Exhibit Cover Sheet (Exhibit B). Exhibit lists are due by **August 23, 2023, at 12:00 p.m. (Atlantic Standard Time)**, except that exhibit lists filed

by objectors to the Qualifying Modification are due **August 29, 2023**, at **10:00 am (Atlantic Standard Time)**. Each Party must follow the below instructions for filing the Exhibit List.

- i. Each Party is directed to file an Exhibit List using the CM/ECF event “Motion Submitting.”
- ii. Each Party must upload each exhibit as a separate attachment to the Exhibit List. Hyperlinks may not be used in lieu of uploading an exhibit.
- iii. The Exhibit List is intended to be a single filing (with multiple exhibits). If your Exhibit List and attachments exceed the upload capacity of CM/ECF,³ you may divide your submission into multiple filings.
 - A. **Large Exhibits.** If a single exhibit is too large to file, Parties shall divide the exhibit into separate attachments. In this scenario, the Party assigns each part of the exhibit **the same exhibit letter or number**, and types in the text field “Part 1 of [Total Number].” Parties **must** select the same exhibit letter or number to indicate to the Court that an uploaded exhibit is continued in the next attachment. For example, if “Party ABC” needs to divide Exhibit C into 3 attachments due to its size, “Party ABC” will upload and designate the exhibit as follows: Exhibit C: “Part 1 of 3,” the next attachment as Exhibit C “Part 2 of 3,” and the final attachment as Exhibit C “Part 3 of 3.” The next attachment will then proceed to Exhibit D.
 - B. **Multiple Filings.** If a group of exhibits reaches the 20MB capacity for a single CM/ECF filing, parties must continue to file their exhibits by starting a new filing. Parties will again select the “Motion Submitting” CM/ECF Activity when filing the next set of exhibits. The main document for a continued filing should be titled “Continued Exhibits of [Party Name]” and may include a list of the exhibits attached to that single filing.
- iv. **Requests to Seal Certain Exhibits.** A Party who has included an exhibit on their Exhibit List that is subject to a sealing application **must file a placeholder for the exhibit, clearly marked as such.** The placeholder document can simply state “Exhibit Name, Exhibit Brief Description, Party [Name] will file a Motion to Seal regarding Exhibit [Letter].” The Party must still select the exhibit letter corresponding to the exhibit and type in the text field “SEALED Exhibit [Letter].”

³ The maximum capacity of the U.S. Bankruptcy Court for the District of Puerto Rico CM/ECF System is 20 MB for a single filing.

- A. When a Party files a motion to seal, the Party must select the CM/ECF designation “MOTION TO SEAL” or “URGENT MOTION TO SEAL.” This is the only CM/ECF Designation that allows the Clerk’s Office to unseal the document at a later date. Failure to select the appropriate designation will result in a deficient filing notification and/or termination of the motion.

The Exhibit Cover Sheet, Exhibit B to the Informative Motion, must include all docket entry numbers for each exhibit that was previously filed in connection with the Exhibit List. Thus, a Party is only able to complete the Exhibit Cover Sheet **after** the Party has filed their Exhibit List.

c. Witness Cover Sheet (Exhibit C). Each party who intends to cross examine any witnesses or reserve the right to redirect a witness at the hearing, must file a Witness Cover Sheet containing: (a) the witness(es) to be examined; (b) the factual issue(s) to which the proposed cross-examination or testimony relates; (c) the subject matter of the testimony and its relevance to the factual issue(s); and (d) the time requested for such examination or testimony.

d. Parties not represented by counsel. Any individual Party who wishes to participate in the Hearings must file a Pretrial Informative Motion with the Party Appearance Sheet, Witness Cover Sheet, and Exhibit Cover Sheet as set forth in paragraph 6.

Notice of Hearings Agendas and Order of Appearances for Oral Argument and Witness Examination in connection with the Qualifying Modification Hearing

7. In anticipation of the Hearings, the Debtors shall file an agenda outlining the matters to be addressed and the projected timetable for the Hearings by **August 28, 2023**, in accordance with the Seventeenth Amended Case Management Procedures and *Order Granting Motion for Entry of an Order Approving Procedures and Establishing Schedule for Approval of Qualifying Modification for the Puerto Rico Tourism Development Fund*. (See Docket Entry

No. 24725-1 § III.M; see also Docket Entry No. 10 in Case No. 23-cv-01373.) Debtors' counsel shall file a revised agenda on **August 29, 2023**, if circumstances have changed or if requested to do so by the Court. Debtors' counsel shall email a proposed agenda, including preliminary time allocations, to the Court by **August 26, 2023**, at **12:00 p.m. (Atlantic Standard Time)**. The Parties intending to present argument and examine witnesses in connection with the Qualifying Modification Hearing shall meet and confer and jointly propose time allocations for argument in connection with the Qualifying Modification Hearing.

a. Omnibus Hearing Agenda. The agenda shall include: (a) the names of the individuals who intend to appear and speak on behalf of each relevant Party in connection with each motion or report; (b) the order in which the parties to the relevant motion shall present argument; and (c) time allocations for each Party.

b. Status Reports. The Oversight Board and AAFAF shall file written status reports by **5:00 p.m. (Atlantic Standard Time)** on **August 28, 2023**. The Oversight Board's report shall address: (a) the general status and activities of the Oversight Board; (b) the general status of relations among the Oversight Board and the Commonwealth and federal governments; (c) the general status of the ADR and ACR processes, including the anticipated number of matters to be directed into the ADR process and anticipated timetable for initiation of ADR procedures with respect to such matters; and (d) the anticipated timing and volume of objections to claims. AAFAF shall provide a general status report on its status and activities, including an overview of the Commonwealth's ongoing response to the COVID-19 pandemic. At the Omni Hearing, the Court will ask counsel to the Oversight Board and AAFAF to respond to questions and comments, if any, related to their respective status reports.

c. Qualifying Modification Hearing Agenda. The Agenda shall include the order of appearances for oral argument and witness examination including: (a) the Parties (including any persons appearing pro se) who intend to appear and present opening and closing statements; (b) time allocations for each speaker providing an opening and closing statement; (c) the names and anticipated order of the witnesses that will be cross-examined; (d) the names and anticipated order of the Parties who will cross-examine the witnesses; and (e) the name of any Party who anticipates conducting redirect examination of a witness. The Court will allocate up to two hours for the Qualifying Modification Hearing. Parties are not required to exhaust the entire 2 hours allotted.

8. **Courtroom Procedures.** All persons appearing in person or by telephonic means are reminded of the general prohibition against photographing, recording, and rebroadcasting of court proceedings. Violation of this prohibition may result in sanctions, including removal of court issued media credentials, restricted entry to future hearings, denial of entry to future hearings, or any other sanctions deemed necessary by the Court. The formalities of a courtroom must be observed.

9. **Electronic Device Policy in New York.** Counsel with New York bar credentials are permitted to bring one cellular telephone into the New York courthouse in accordance with the Fifth Amended Standing Order M10-468.⁴ Counsel seeking to bring additional electronic devices into the New York Courtroom for the Hearings must complete the Electronic Device General Purpose Form available on the Court's website at <https://www.nysd.uscourts.gov/forms/fillable-form-electronic-devices-general-purpose> and

⁴ The Fifth Amended Standing Order is available at <https://nysd.uscourts.gov/sites/default/files/2022-04/20mc316%205th%20amd%20standing%20order.pdf>.

submit the completed form to the following address: swaindprcorresp@nysd.uscourts.gov by **August 24, 2023, at 12:00 p.m. (Atlantic Standard Time)**. Such requests must be compliant with S.D.N.Y. Standing Order M10-468. The Court directs counsel's attention to the technical and device usage restrictions detailed in the Fifth Amended Standing Order. Devices may not be used for communications purposes in the courtroom and no recording or transmission of the proceedings is permitted.

10. Electronic Device Policy in San Juan. Counsel with Puerto Rico bar credentials are permitted to bring electronic devices into the San Juan courthouse. Counsel authorized to appear Pro Hac Vice in the Title III proceedings shall present (i) a paper or hard copy of the order granting Pro Hac Vice admission, and (ii) a current government-issued photo identification.⁵ Devices may not be used for communications purposes in the courtroom and no recording or transmission of the proceedings is permitted.

SO ORDERED.

Dated: August 16, 2023

/s/ Laura Taylor Swain
LAURA TAYLOR SWAIN
United States District Judge

⁵ The electronic devices policy for the United States District Court for the District of Puerto Rico is available at <https://promesa.prd.uscourts.gov/electronic-devices-policies>.